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HOUSE BILL 2393

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State of Washington                      60th Legislature                      2007 Regular Session

By Representatives Pearson, Ahern, Ross, Warnick, Bailey, Kristiansen, Walsh, Ericks, Newhouse, McCune, Haler, Dunn, Roach, Orcutt and Skinner

Read first time 03/19/2007. Referred to Committee on Human Services.

1            AN ACT Relating to improving public safety by improving state  
2 supervision of felony offenders in the community; amending RCW  
3 9.94A.737, 9.94A.631, and 9.94A.728; adding a new section to chapter  
4 9.94A RCW; adding new sections to chapter 72.09 RCW; adding a new  
5 section to chapter 4.24 RCW; creating a new section; prescribing  
6 penalties; making an appropriation; and declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            NEW SECTION.    **Sec. 1.** The legislature finds that public safety is  
9 one of the paramount duties of the state and an essential function of  
10 government. The legislature further finds that systemic problems exist  
11 with the department of corrections that must be addressed expeditiously  
12 and unequivocally in order to rebuild public confidence in the state's  
13 ability to best protect them from criminal offenders who have been  
14 released from full incarceration but are still serving their sentences  
15 on community custody. Turnstile justice is not conducive to building  
16 public safety, public confidence in and support for our criminal  
17 justice system as a whole, and the morale of personnel working within  
18 our department of corrections, law enforcement agencies, and  
19 prosecutors' offices. Citizens expect and demand predictability,

1 proportionality, uniformity, transparency, and justice when dealing  
2 with criminal offenders and due consideration for the severe and  
3 detrimental impact of crime on victims and their families and friends  
4 when dealing with such offenders.

5 **Sec. 2.** RCW 9.94A.737 and 2005 c 435 s 3 are each amended to read  
6 as follows:

7 (1) If an offender violates any condition or requirement of  
8 community custody, the department may transfer the offender to a more  
9 restrictive confinement status to serve up to the remaining portion of  
10 the sentence, less credit for any period actually spent in community  
11 custody or in detention awaiting disposition of an alleged violation  
12 and subject to the limitations of subsection (2) of this section.

13 (2)(a)(i) For a sex offender sentenced to a term of community  
14 custody under RCW 9.94A.670 for a crime committed prior to the  
15 effective date of this act who violates any condition of community  
16 custody, the department may impose a sanction of up to sixty days'  
17 confinement in a local correctional facility for each violation. If  
18 the department imposes a sanction, the department shall submit within  
19 seventy-two hours a report to the court and the prosecuting attorney  
20 outlining the violation or violations and the sanctions imposed.

21 (ii) For a sex offender sentenced to a term of community custody  
22 under RCW 9.94A.670 for a crime committed on or after the effective  
23 date of this act who violates any condition of community custody, the  
24 department may impose, for each violation, a sanction of total  
25 confinement in a local correctional facility for any period of time  
26 that does not exceed the offender's remaining term of community  
27 custody. If the department imposes a sanction, the department shall  
28 submit within seventy-two hours a report to the court and the  
29 prosecuting attorney outlining the violation or violations and the  
30 sanctions imposed.

31 (b) For a sex offender sentenced to a term of community custody  
32 under RCW 9.94A.710 who violates any condition of community custody  
33 after having completed his or her maximum term of total confinement,  
34 including time served on community custody in lieu of earned release,  
35 the department may impose a sanction of up to sixty days in a local  
36 correctional facility for each violation.

1 (c)(i) For an offender sentenced to a term of community custody  
2 under RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW  
3 9.94A.545, for a crime committed on or after July 1, 2000, but before  
4 the effective date of this act, who violates any condition of community  
5 custody after having completed his or her maximum term of total  
6 confinement, including time served on community custody in lieu of  
7 earned release, the department may impose a sanction of up to sixty  
8 days in total confinement for each violation. The department may  
9 impose sanctions such as work release, home detention with electronic  
10 monitoring, work crew, community restitution, inpatient treatment,  
11 daily reporting, curfew, educational or counseling sessions,  
12 supervision enhanced through electronic monitoring, or any other  
13 sanctions available in the community.

14 (ii) For an offender sentenced to a term of community custody under  
15 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,  
16 for a crime committed on or after the effective date of this act, who  
17 violates any condition of community custody after having completed his  
18 or her maximum term of total confinement, including time served on  
19 community custody in lieu of earned release, the department may impose,  
20 for each violation, a sanction of total confinement for any period of  
21 time that does not exceed the offender's remaining term of community  
22 custody. The department may impose sanctions such as work release,  
23 home detention with electronic monitoring, work crew, community  
24 restitution, inpatient treatment, daily reporting, curfew, educational  
25 or counseling sessions, supervision enhanced through electronic  
26 monitoring, or any other sanctions available in the community.

27 (d) For an offender sentenced to a term of community placement  
28 under RCW 9.94A.705 who violates any condition of community placement  
29 after having completed his or her maximum term of total confinement,  
30 including time served on community custody in lieu of earned release,  
31 the department may impose a sanction of up to sixty days in total  
32 confinement for each violation. The department may impose sanctions  
33 such as work release, home detention with electronic monitoring, work  
34 crew, community restitution, inpatient treatment, daily reporting,  
35 curfew, educational or counseling sessions, supervision enhanced  
36 through electronic monitoring, or any other sanctions available in the  
37 community.

1 (3) If an offender is accused of violating any condition or  
2 requirement of community custody, he or she is entitled to a hearing  
3 before the department prior to the imposition of sanctions. The  
4 hearing shall be considered as offender disciplinary proceedings and  
5 shall not be subject to chapter 34.05 RCW. The department shall  
6 develop hearing procedures and a structure of graduated sanctions.

7 (4) The hearing procedures required under subsection (3) of this  
8 section shall be developed by rule and include the following:

9 (a) Hearing officers shall report through a chain of command  
10 separate from that of community corrections officers;

11 (b) The department shall provide the offender with written notice  
12 of the violation, the evidence relied upon, and the reasons the  
13 particular sanction was imposed. The notice shall include a statement  
14 of the rights specified in this subsection, and the offender's right to  
15 file a personal restraint petition under court rules after the final  
16 decision of the department;

17 (c) The hearing shall be held unless waived by the offender, and  
18 shall be electronically recorded. For offenders not in total  
19 confinement, the hearing shall be held within fifteen working days, but  
20 not less than twenty-four hours, after notice of the violation. For  
21 offenders in total confinement, the hearing shall be held within five  
22 working days, but not less than twenty-four hours, after notice of the  
23 violation;

24 (d) The offender shall have the right to: (i) Be present at the  
25 hearing; (ii) have the assistance of a person qualified to assist the  
26 offender in the hearing, appointed by the hearing officer if the  
27 offender has a language or communications barrier; (iii) testify or  
28 remain silent; (iv) call witnesses and present documentary evidence;  
29 and (v) question witnesses who appear and testify; and

30 (e) The sanction shall take effect if affirmed by the hearing  
31 officer. Within seven days after the hearing officer's decision, the  
32 offender may appeal the decision to a panel of three reviewing officers  
33 designated by the secretary or by the secretary's designee. The  
34 sanction shall be reversed or modified if a majority of the panel finds  
35 that the sanction was not reasonably related to any of the following:  
36 (i) The crime of conviction; (ii) the violation committed; (iii) the  
37 offender's risk of reoffending; or (iv) the safety of the community.

1 (5) For purposes of this section, no finding of a violation of  
2 conditions may be based on unconfirmed or unconfirmable allegations.

3 (6) The department shall work with the Washington association of  
4 sheriffs and police chiefs to establish and operate an electronic  
5 monitoring program for low-risk offenders who violate the terms of  
6 their community custody. Between January 1, 2006, and December 31,  
7 2006, the department shall endeavor to place at least one hundred low-  
8 risk community custody violators on the electronic monitoring program  
9 per day if there are at least that many low-risk offenders who qualify  
10 for the electronic monitoring program.

11 (7) Local governments, their subdivisions and employees, the  
12 department and its employees, and the Washington association of  
13 sheriffs and police chiefs and its employees shall be immune from civil  
14 liability for damages arising from incidents involving low-risk  
15 offenders who are placed on electronic monitoring unless it is shown  
16 that an employee acted with gross negligence or bad faith.

17 **Sec. 3.** RCW 9.94A.631 and 1984 c 209 s 11 are each amended to read  
18 as follows:

19 If an offender violates any condition or requirement of a sentence,  
20 a community corrections officer may arrest or cause the arrest of the  
21 offender without a warrant, pending a determination by the court. If  
22 there is reasonable cause to believe that an offender has violated a  
23 condition or requirement of the sentence, an offender may be required  
24 to submit to a search and seizure of the offender's person, residence,  
25 automobile, or other personal property. An offender may be required to  
26 submit to a search without reasonable cause to believe that he or she  
27 has violated a condition or requirement of the sentence if the search  
28 is a condition of his or her community custody under section 4 of this  
29 act. A community corrections officer may also arrest an offender for  
30 any crime committed in his or her presence. The facts and  
31 circumstances of the conduct of the offender shall be reported by the  
32 community corrections officer, with recommendations, to the court.

33 If a community corrections officer arrests or causes the arrest of  
34 an offender under this section, the offender shall be confined and  
35 detained in the county jail of the county in which the offender was  
36 taken into custody, and the sheriff of that county shall receive and  
37 keep in the county jail, where room is available, all prisoners

1 delivered to the jail by the community corrections officer, and such  
2 offenders shall not be released from custody on bail or personal  
3 recognizance, except upon approval of the court, pursuant to a written  
4 order.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.94A RCW  
6 to read as follows:

7 (1) The legislature finds that:

8 (a) Offenders in total confinement may be subjected to random,  
9 unannounced inspections without violating the constitutional  
10 requirement that all searches be reasonable;

11 (b) Offenders on community custody have the same expectation of  
12 privacy as offenders in total confinement; and

13 (c) Requiring an offender on community custody to submit to random,  
14 unannounced inspections is therefore reasonable under the federal and  
15 state Constitutions.

16 (2) When a court sentences an offender to a term of community  
17 custody under RCW 9.94A.505(2)(b), 9.94A.545, 9.94A.650, or 9.94A.715,  
18 for a crime committed on or after the effective date of this act, the  
19 court shall require the offender, as a condition of community custody,  
20 to submit to random, unannounced inspections of his or her person,  
21 residence, automobile, or other personal property.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 72.09 RCW  
23 to read as follows:

24 (1) The department shall inspect the person, residence, automobile,  
25 or other personal property of an offender under its supervision in the  
26 community whenever the department has reasonable cause to believe that  
27 the offender has violated a condition or requirement of his or her  
28 sentence.

29 (2) The department shall perform random, unannounced inspections of  
30 the person, residence, automobile, or other personal property of every  
31 offender under the department's supervision pursuant to a term of  
32 community custody imposed for a crime committed on or after the  
33 effective date of this act.

34 **Sec. 6.** RCW 9.94A.728 and 2004 c 176 s 6 are each amended to read  
35 as follows:

1 No person serving a sentence imposed pursuant to this chapter and  
2 committed to the custody of the department shall leave the confines of  
3 the correctional facility or be released prior to the expiration of the  
4 sentence except as follows:

5 (1) Except as otherwise provided for in subsection (2) of this  
6 section, the term of the sentence of an offender committed to a  
7 correctional facility operated by the department may be reduced by  
8 earned release time in accordance with procedures that shall be  
9 developed and promulgated by the correctional agency having  
10 jurisdiction in which the offender is confined. The earned release  
11 time shall be for good behavior and good performance, as determined by  
12 the correctional agency having jurisdiction. The correctional agency  
13 shall not credit the offender with earned release credits in advance of  
14 the offender actually earning the credits. Any program established  
15 pursuant to this section shall allow an offender to earn early release  
16 credits for presentence incarceration. If an offender is transferred  
17 from a county jail to the department, the administrator of a county  
18 jail facility shall certify to the department the amount of time spent  
19 in custody at the facility and the amount of earned release time. An  
20 offender who has been convicted of a felony committed after July 23,  
21 1995, that involves any applicable deadly weapon enhancements under RCW  
22 9.94A.533 (3) or (4), or both, shall not receive any good time credits  
23 or earned release time for that portion of his or her sentence that  
24 results from any deadly weapon enhancements.

25 (a) In the case of an offender convicted of a serious violent  
26 offense, or a sex offense that is a class A felony, committed on or  
27 after July 1, 1990, and before July 1, 2003, the aggregate earned  
28 release time may not exceed fifteen percent of the sentence. In the  
29 case of an offender convicted of a serious violent offense, or a sex  
30 offense that is a class A felony, committed on or after July 1, 2003,  
31 or any other offense committed on or after the effective date of this  
32 act, the aggregate earned release time may not exceed ten percent of  
33 the sentence.

34 (b)(i) In the case of an offender who qualifies under (b)(ii) of  
35 this subsection, the aggregate earned release time may not exceed fifty  
36 percent of the sentence.

37 (ii) An offender is qualified to earn up to fifty percent of

1 aggregate earned release time under this subsection (1)(b) if he or  
2 she:

3 (A) Is classified in one of the two lowest risk categories under  
4 (b)(iii) of this subsection;

5 (B) Is not confined pursuant to a sentence for:

6 (I) A sex offense;

7 (II) A violent offense;

8 (III) A crime against persons as defined in RCW 9.94A.411;

9 (IV) A felony that is domestic violence as defined in RCW  
10 10.99.020;

11 (V) A violation of RCW 9A.52.025 (residential burglary);

12 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
13 violate, RCW 69.50.401 by manufacture or delivery or possession with  
14 intent to deliver methamphetamine; or

15 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
16 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);  
17 and

18 (C) Has no prior conviction for:

19 (I) A sex offense;

20 (II) A violent offense;

21 (III) A crime against persons as defined in RCW 9.94A.411;

22 (IV) A felony that is domestic violence as defined in RCW  
23 10.99.020;

24 (V) A violation of RCW 9A.52.025 (residential burglary);

25 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
26 violate, RCW 69.50.401 by manufacture or delivery or possession with  
27 intent to deliver methamphetamine; or

28 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
29 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).

30 (iii) For purposes of determining an offender's eligibility under  
31 this subsection (1)(b), the department shall perform a risk assessment  
32 of every offender committed to a correctional facility operated by the  
33 department who has no current or prior conviction for a sex offense, a  
34 violent offense, a crime against persons as defined in RCW 9.94A.411,  
35 a felony that is domestic violence as defined in RCW 10.99.020, a  
36 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
37 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
38 manufacture or delivery or possession with intent to deliver

1 methamphetamine, or a violation of, or an attempt, solicitation, or  
2 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
3 substance to a minor). The department must classify each assessed  
4 offender in one of four risk categories between highest and lowest  
5 risk.

6 (iv) The department shall recalculate the earned release time and  
7 reschedule the expected release dates for each qualified offender under  
8 this subsection (1)(b).

9 (v) This subsection (1)(b) applies retroactively to eligible  
10 offenders serving terms of total confinement in a state correctional  
11 facility as of July 1, 2003.

12 (vi) This subsection (1)(b) does not apply to offenders convicted  
13 of offenses committed on or after ((July 1, 2010)) the effective date  
14 of this act.

15 (c) In no other case shall the aggregate earned release time exceed  
16 one-third of the total sentence;

17 (2)(a) A person convicted of a sex offense or an offense  
18 categorized as a serious violent offense, assault in the second degree,  
19 vehicular homicide, vehicular assault, assault of a child in the second  
20 degree, any crime against persons where it is determined in accordance  
21 with RCW 9.94A.602 that the offender or an accomplice was armed with a  
22 deadly weapon at the time of commission, or any felony offense under  
23 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become  
24 eligible, in accordance with a program developed by the department, for  
25 transfer to community custody status in lieu of earned release time  
26 pursuant to subsection (1) of this section;

27 (b) A person convicted of a sex offense, a violent offense, any  
28 crime against persons under RCW 9.94A.411(2), or a felony offense under  
29 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may  
30 become eligible, in accordance with a program developed by the  
31 department, for transfer to community custody status in lieu of earned  
32 release time pursuant to subsection (1) of this section;

33 (c) The department shall, as a part of its program for release to  
34 the community in lieu of earned release, require the offender to  
35 propose a release plan that includes an approved residence and living  
36 arrangement. All offenders with community placement or community  
37 custody terms eligible for release to community custody status in lieu

1 of earned release shall provide an approved residence and living  
2 arrangement prior to release to the community;

3 (d) The department may deny transfer to community custody status in  
4 lieu of earned release time pursuant to subsection (1) of this section  
5 if the department determines an offender's release plan, including  
6 proposed residence location and living arrangements, may violate the  
7 conditions of the sentence or conditions of supervision, place the  
8 offender at risk to violate the conditions of the sentence, place the  
9 offender at risk to reoffend, or present a risk to victim safety or  
10 community safety. The department's authority under this section is  
11 independent of any court-ordered condition of sentence or statutory  
12 provision regarding conditions for community custody or community  
13 placement;

14 (e) An offender serving a term of confinement imposed under RCW  
15 9.94A.670(4)(a) is not eligible for earned release credits under this  
16 section;

17 (3) An offender may leave a correctional facility pursuant to an  
18 authorized furlough or leave of absence. In addition, offenders may  
19 leave a correctional facility when in the custody of a corrections  
20 officer or officers;

21 (4)(a) The secretary may authorize an extraordinary medical  
22 placement for an offender when all of the following conditions exist:

23 (i) The offender has a medical condition that is serious enough to  
24 require costly care or treatment;

25 (ii) The offender poses a low risk to the community because he or  
26 she is physically incapacitated due to age or the medical condition;  
27 and

28 (iii) Granting the extraordinary medical placement will result in  
29 a cost savings to the state.

30 (b) An offender sentenced to death or to life imprisonment without  
31 the possibility of release or parole is not eligible for an  
32 extraordinary medical placement.

33 (c) The secretary shall require electronic monitoring for all  
34 offenders in extraordinary medical placement unless the electronic  
35 monitoring equipment interferes with the function of the offender's  
36 medical equipment or results in the loss of funding for the offender's  
37 medical care. The secretary shall specify who shall provide the

1 monitoring services and the terms under which the monitoring shall be  
2 performed.

3 (d) The secretary may revoke an extraordinary medical placement  
4 under this subsection at any time;

5 (5) The governor, upon recommendation from the clemency and pardons  
6 board, may grant an extraordinary release for reasons of serious health  
7 problems, senility, advanced age, extraordinary meritorious acts, or  
8 other extraordinary circumstances;

9 (6) No more than the final six months of the sentence may be served  
10 in partial confinement designed to aid the offender in finding work and  
11 reestablishing himself or herself in the community;

12 (7) The governor may pardon any offender;

13 (8) The department may release an offender from confinement any  
14 time within ten days before a release date calculated under this  
15 section; and

16 (9) An offender may leave a correctional facility prior to  
17 completion of his or her sentence if the sentence has been reduced as  
18 provided in RCW 9.94A.870.

19 Notwithstanding any other provisions of this section, an offender  
20 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a  
21 mandatory minimum sentence of total confinement shall not be released  
22 from total confinement before the completion of the listed mandatory  
23 minimum sentence for that felony crime of conviction unless allowed  
24 under RCW 9.94A.540, however persistent offenders are not eligible for  
25 extraordinary medical placement.

26 NEW SECTION. **Sec. 7.** A new section is added to chapter 72.09 RCW  
27 to read as follows:

28 The department shall develop a performance review whenever an  
29 offender serving a term of community custody is convicted of a new  
30 crime to determine whether the department contributed to the  
31 circumstances that allowed the crime to occur. Beginning January 1,  
32 2008, the department shall compile and submit copies of the reviews  
33 developed during the previous calendar year to the governor and the  
34 legislature.

35 NEW SECTION. **Sec. 8.** A new section is added to chapter 72.09 RCW  
36 to read as follows:

1 (1) Beginning January 1, 2008, the department shall submit an  
2 annual report to the governor and the legislature containing:

3 (a) The number of offenders supervised by the department during the  
4 previous calendar year;

5 (b) The number and custody levels of offenders who violated one or  
6 more conditions of their community custody during the previous calendar  
7 year; and

8 (c) The number and custody levels of offenders who were convicted,  
9 during the previous calendar year, of new offenses that were committed  
10 while the offenders were on community custody.

11 (2) The department shall perform a study to determine whether it  
12 has the capacity to adequately supervise all offenders who are serving  
13 a term of community custody. The department shall report the results  
14 of this study along with a plan to efficiently and effectively improve  
15 its supervision capacity to the governor and the legislature by January  
16 1, 2008. For purposes of this subsection, "adequately supervise" means  
17 to supervise in a manner that minimizes the number of community custody  
18 violations and new crimes committed by offenders under supervision.

19 NEW SECTION. **Sec. 9.** A new section is added to chapter 4.24 RCW  
20 to read as follows:

21 (1) The department of corrections and its officers, employees,  
22 agents, and volunteers, who supervise offenders in the community, are  
23 not liable for civil damages resulting from any act or omission in the  
24 provision of such supervision, unless the act or omission constitutes  
25 gross negligence. This section does not create any duty and shall not  
26 be construed to create a duty where none exists.

27 (2) The burden of proof is clear, cogent, and convincing evidence  
28 in any action alleging damages as a result of any act or omission on  
29 the part of the department of corrections and its officers, employees,  
30 agents, and volunteers, in supervising offenders in the community.

31 NEW SECTION. **Sec. 10.** The sum of . . . . . dollars, or as much  
32 thereof as may be necessary, is appropriated for the fiscal year ending  
33 June 30, 2008, from the general fund to the department of corrections  
34 for the purposes of this act.

1        NEW SECTION.   **Sec. 11.**   This act is necessary for the immediate  
2   preservation of the public peace, health, or safety, or support of the  
3   state government and its existing public institutions, and takes effect  
4   immediately.

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